Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications for Review –	)	CC Docket No. 01-22
BellSouth Petition for Pricing Flexibility	)	
for Special Access and Dedicated	)	
Transport Services	)	

REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.115 of the Commission's Rules and the Commission's Public Notice, DA 01-209, released January 29, 2001, AT&T Corp. ("AT&T") respectfully submits these reply comments in support of its application for review ("Application") of the Common Carrier Bureau's Memorandum Opinion and Order granting BellSouth's petition for pricing flexibility for special access and dedicated transport services, DA 00-2793, released December 15, 2000 ("Order"). The Order granted broad deregulation of BellSouth's special access and dedicated transport services pursuant to the Commission's *Pricing Flexibility Order*.[1] As AT&T demonstrated in its Application, the Commission should vacate the Bureau's Order because (1) the evidence below demonstrated that there is no effective competition for the BellSouth access services at issue, and (2) BellSouth failed to meet its burden of proof because it did not provide the evidence necessary to determine whether it had satisfied the Commission's revenue-based trigger.

ORIGINAL

[1] *Access Charge Reform, et al.*, CC Docket Nos. 96-262, *et al.*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14222 (1999) ("*Pricing Flexibility Order*"), *aff'd, MCI WorldCom Inc.* v. *FCC*, Nos. 99-1395, *et al.* (D.C. Cir. February 2, 2001).

ASCENT supports both of AT&T's claims, and the remaining local exchange carrier ("LEC") comments cast no doubt on AT&T's showings. Although the LECs argue that AT&T is attempting a "collateral attack" on the *Pricing Flexibility Order* itself, none of these commenters addresses AT&T's actual claim, which is that mechanical application of the triggers is inappropriate where, as here, the evidence clearly demonstrates that BellSouth faces no competitive pressure on its special access and dedicated transport rates. Similarly, the LECs offer no valid excuse for failing to provide the data necessary for anyone (either the Commission or other parties) to verify whether BellSouth has actually satisfied the Commission's triggers.

1. AT&T demonstrated in its Application, based on *unrebutted* real-world evidence, that competition in the special access and dedicated transport markets at issue in BellSouth's petition is too limited to place competitive pressure on BellSouth's access rates. As a result, under the theory underlying the *Pricing Flexibility Order* (¶¶ 79-81), BellSouth can engage in predatory and monopoly pricing of these services in the vast majority of the MSAs in which it has obtained relief. The Commission simply did not anticipate that the competitive triggers would permit such broad deregulation of access services when the availability of competitive alternatives is so obviously lacking. *See, e.g., Pricing Flexibility Order* ¶ 146; *MCI WorldCom Inc.* v. *FCC*, Nos. 99-1395, *et al.*, Brief for Federal Communications Commission, p. 40 (D.C. Cir., filed July 20, 2000) (the pricing flexibility triggers "are most likely to be satisfied initially in large urban areas, where competition would be expected to develop first"). Under these circumstances, a mechanical application of the triggers is inconsistent with both the Act and the *Pricing Flexibility Order*. The Common Carrier Bureau erred in simply ignoring the overwhelming real-world evidence that, in this instance, satisfaction of the triggers did not indicate a competitive presence sufficient to warrant pricing flexibility.

The LECs' response is pure misdirection. They claim that AT&T is "collaterally attack[ing] the Commission's pricing flexibility rules" (*see, e.g.*, BellSouth at 2-4), and that the D.C. Circuit's recent decision upholding those rules conclusively establishes their validity. *See* BellSouth at 2-4; SBC at 1-2; USTA at 1-2. But AT&T is not attacking the rule itself; its claim is that the evidence below demonstrated that application of the rule *in these circumstances* would result in premature deregulation of BellSouth's services. It is well-established that a party may always challenge the application of a rule as it is applied in a particular context. *See* 47 C.F.R. § 1.115(b).

As to *that* claim, the LECs have no answer. No party has ever even attempted to rebut AT&T's showing, either before the Bureau or here, that there is insufficient competition in the markets at issue to put competitive pressure on BellSouth's access rates. Under those circumstances, as the Commission acknowledged in the *Pricing Flexibility Order* (¶¶ 79-81), BellSouth would have the ability to engage in anticompetitive and monopoly pricing for these services in the absence of the Commission's rules establishing price caps and restrictions on geographic deaveraging of rates. As ASCENT correctly observes (at 6), the Bureau had an obligation, not only to determine whether the triggers were mechanically satisfied, but to "take into account the policy considerations underlying the Commission's determination that grant of such relief is appropriate only in circumstances which demonstrate not only the existence of actual competition for the services at issue but also that the level of such competitive efforts is sufficient to limit future monopolistic behavior by the incumbent LEC." Had the Bureau fulfilled that obligation, it would have denied the petition, and the Commission should correct that error by vacating the Order.

2. As AT&T (and WorldCom) also demonstrated, BellSouth relied on the revenue-based trigger in most of the MSAs at issue in its petition, but it failed to satisfy its burden of proof because it did not provide evidence sufficient to verify whether it had in fact satisfied that trigger. BellSouth refused to provide revenue data at the wire center level, but instead simply asserted that the qualifying wire centers represented a certain percentage of its MSA-wide revenues for that service. *See* Order ¶ 18. As AT&T and WorldCom showed, and as ASCENT agrees (at 2-4), it is therefore impossible for the Commission or any party to verify that BellSouth has in fact met the alternative revenue-based trigger in any of these MSAs. The Common Carrier Bureau took BellSouth at its word.

Once again, the LECs are not really disputing AT&T's claim. Indeed, BellSouth implicitly acknowledges that no one (including the Commission) can independently verify its claims, but it argues that this failure of proof can be excused because its calculations assertedly "do not involve higher order mathematics, mathematical modeling or complex statistical formulas that might otherwise lend themselves to error." BellSouth at 5. Such an argument is extraordinary; AT&T is not aware of any other context in which the Commission makes major decisions without requiring the party that has the burden of proof to show its work. The Commission should not establish such a disturbing precedent, and it certainly should not award BellSouth sweeping deregulation of services over which BellSouth concededly has market power on the basis of a showing that boils down to the statement: "Trust me, I qualify."

The other LECs argue that the Commission's rules do not require revenue data at the wire center level, but they are wrong. Verizon at 1-2; SBC at 2. Although the pricing flexibility rules may not *expressly* require that such data be included in a petition, no reasonable person reading the rules would conclude otherwise. The pricing flexibility rules clearly require a

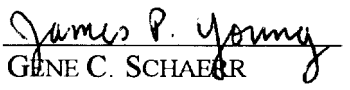
showing that the wire centers on which the petitioning carrier is relying account for a certain percentage of the revenue in that MSA. The rules thus *necessarily* require that a petitioner provide data sufficient to permit the Commission to confirm that the petitioner in fact satisfies that test; the Commission has never read its rules any other way. Because revenue data at the wire center level is necessary to confirm a petitioner's claim that it has satisfied the revenue-based trigger, the rules require a petitioner to provide such data in its petition. *See Pricing Flexibility Order* ¶ 84 (LEC showings must be "readily verifiable"); *see also Petition of U S WEST Communications, Inc. for Forbearance from Dominant Carrier Regulation in the Phoenix, Arizona MSA*, 14 FCC Rcd. 19947 (¶ 25) (1999) (rejecting BOCs' market share estimates because they did not provide the underlying raw data).

Finally, BellSouth could easily have provided the data necessary for others to confirm its claims, contrary to the suggestion of Verizon (at 3). Indeed, Sprint *did* provide such data in its recent pricing flexibility petition (CCB/CPD File No. 01-04). The Commission should not endorse BellSouth's unreviewable, unveriable approach, which other LECs (like Verizon) have already copied. The Order should be vacated for this reason as well.

CONCLUSION

For the foregoing reasons, the Commission should vacate the Order.

Respectfully submitted,



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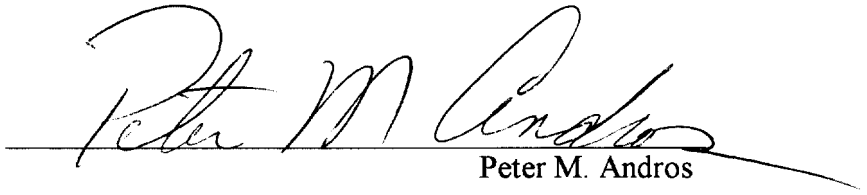
February 23, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2001, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: February 23, 2001
Washington, D.C.



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